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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 41

NATIONAL MARITIME UNION OF AMERICA, AFL-CIO,

Petitioner,

against

SOCIEDAD NATIONAL DE MARINEROS DE HONDURAS, *et al.*,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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NATIONAL MARITIME UNION OF AMERICA, AFL-CIO (NMU) hereby petitions before judgment for a writ of certiorari to the Court of Appeals for the District of Columbia Circuit to review the final judgment entered by the District Court for the District of Columbia on May 6, 1962 enjoining the NLRB from conducting an election on Honduran flag vessels operated by the United Fruit Company through a wholly-owned and controlled Honduran subsidiary.

Opinions Below.

The opinion of the District Court is reported in 201 F. Supp. 82 and is reprinted in pp. 8-28 of the NLRB's petition for certiorari in *McCulloch* v. *Sociedad*, No. 942, this

term. The NLRB's Decision and Direction of Election are reported at 134 NLRB No. 25, and reprinted in the petition for certiorari in *McLeod* v. *Empresa,* No. 858, this term, at pp. 58-70, and also in the petition for certiorari in *National Maritime Union* v. *Empresa,* No. 862, this term, at pp. 38a-49a.

Jurisdiction.

The final judgment of the District Court was entered on March 6, 1962 (Petition for Certiorari in *McCulloch* v. *Sociedad,* No. 942, at pp. 32-33). NMU filed an appeal therefrom on April 23, 1962. On May 1, 1962 the Court of Appeals entered an order authorizing its clerk to transmit the original record to this Court. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Question Presented.

Does the NLRB have jurisdiction over the Honduran flag vessels of an American employer, United Fruit Company, which are operated in United States commerce through a wholly owned and controlled Honduran subsidiary as part of a single integrated fleet of American and Honduran flag vessels used to carry the employer's own tropical produce to American markets?

Statutes Involved.

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 72 Stat. 945, 29 U. S. C. 151, *et seq.*), and of other relevant statutes and treaties, are set forth at pp. 14-19 of the petition for certiorari in *McLeod* v. *Empresa,* No. 858.

Statement.

This is the same case as *McCulloch* v. *Sociedad*, No. 942, this term, in which the NLRB recently filed a petition for certiorari. NMU voluntarily intervened in the case in the District Court and was granted its request to be made a party defendant. This petition presents the same question, although differently worded, as is presented by the Board in its petition, namely, the extent to which the National Labor Relations Act is applicable to foreign flag vessels substantially engaged in the commerce of this nation.

The identical question to the one presented here and based on the identical facts but with a different respondent was presented by NMU in *National Maritime Union of America* v. *Empresa*, No. 862, this term, in a petition for certiorari to the Court of Appeals for the Second Circuit. The Board also petitioned for certiorari in that case in *McLeod* v. *Empresa*, No. 858, this term, presenting the identical question that it presents in No. 942.

In short, this petition and the petitions in Nos. 942, 858 and 862,[1] all present the same questions and all stem from the Board's Decision and Direction of Election in which it held that it had jurisdiction over Honduran flag vessels of United Fruit Company and directed an election among the unlicensed crew members of those vessels.

A similar question as to the jurisdictional reach of the NLRA in the foreign flag shipping field is presented in

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[1] In No. 858 NMU presented the further question as to whether a federal district court has original jurisdiction to review and enjoin an NLRB decision directing an election where no showing of violation of a constitutional or express statutory right has been made. The Board did not raise this question in No. 858 although it stated in its petition that it disagreed with the Second Circuit's finding that the district court had jurisdiction and reserved the right to argue the issue.

Incres Steamship Company Ltd. v. *International Maritime Workers Union*, No. 469, this term, certiorari granted, December 14, 1961, 368 U. S. 924, which is being scheduled for argument in the October 1962 term. If this petition is granted as well as the petitions in Nos. 858, 862 and 942, it would be possible to schedule them for argument with the *Incres* case.

Reasons for Granting the Writ.

The same reasons set forth by the Board in its petitions in Nos. 858 and 942 and by us in No. 862, and the reasons which impelled this Court to grant the writ in the *Incres* case support this petition.

The question of the Board's jurisdiction over foreign flag ships is of great public concern and should be definitively answered by this Court. With the passage of time, a growing number of conflicting and disparate decisions by state and federal courts and the Board are being reported and guidance from this Court is urgently required for uniform development of this important branch of federal labor and maritime law. There can be no doubt that uncertainty as to governing principles is contributing to labor unrest in the maritime industry. In *McLeod* v. *Empresa* (Petition in No. 862, at p. 299), the Second Circuit observed that the efforts of American maritime unions to organize foreign flag vessels which they deem to be part of this nation's merchant marine led to a nationwide maritime strike last summer which compelled the President of the United States to resort to an 80-day emergency injunction.

Conclusion.

For the foregoing reasons, this petition should be granted together with the petitions in Nos. 858, 862 and 942 and all cases set down for argument with *Incres*, No. 469, in the October 1962 term.

Respectfully submitted,

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